

STATE OF MICHIGAN  
COURT OF APPEALS

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MARGARET L. HALL,

Plaintiff-Appellant,

v

SUSAN E. COHEN,

Defendant-Appellee.

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UNPUBLISHED

January 30, 2007

No. 270949

Oakland Circuit Court

LC No. 2006-071709-NM

Before: Meter, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

In this legal malpractice case, plaintiff appeals as of right from the trial court's opinion and order granting summary disposition to defendant under MCR 2.116(C)(7). We vacate and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In the underlying case, defendant served as plaintiff's attorney in a divorce action. A judgment was entered on the divorce and, at a hearing, plaintiff testified about the settlement reached after mediation. Defendant, as plaintiff's attorney, questioned plaintiff about whether she was satisfied with the settlement, satisfied with defendant's legal representation of her, and acting free of threat or coercion. Plaintiff answered the questions in the affirmative. The underlying trial court then granted the judgment of divorce.

Plaintiff brought the present malpractice action against defendant alleging that defendant negligently handled the divorce. Defendant moved for summary disposition, and the trial court granted defendant's motion pursuant to MCR 2.116(C)(7), opining that plaintiff was barred from bringing suit based on the doctrine of collateral estoppel. We disagree.

Collateral estoppel precludes the relitigation of an issue between the same parties or their privies when the earlier proceeding's determination of the issue was necessary to reach a valid final judgment. *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 677 NW2d 843 (2004). However, the doctrine only bars relitigation of an issue if the parties had a full and fair opportunity to litigate those issues in the earlier action. *Id.*

Here, the issue of the adequacy of defendant's representation was not actually litigated, was not determined by a valid and final judgment, and was not essential to the final judgment. In the first proceeding, plaintiff made statements on the record based upon the knowledge she possessed at the time, and although those statements constitute evidence of plaintiff's existing

state of mind, they do not conclusively foreclose a later action for malpractice. The first proceeding did not adjudicate whether defendant was negligent or satisfactory in her legal representation of plaintiff. Therefore, the issue of defendant's competence was not before the court in the first proceeding, and summary disposition on collateral estoppel grounds was inappropriate.

Defendant also urges this Court to affirm the trial court's grant of summary disposition on alternate grounds. She argues that plaintiff presented insufficient evidence to support the element of causation in her malpractice claim. The trial court did not reach this issue, so we do not address it here. *Tingley v Kortz*, 262 Mich App 583, 588; 688 NW2d 291 (2004). Instead, we merely vacate the trial court's order and remand this case so that the trial court may revisit defendant's motion under MCR 2.116(C)(10) and determine whether plaintiff can demonstrate a genuine issue of material fact that would preclude summary disposition.

Vacated and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter  
/s/ Peter D. O'Connell  
/s/ Alton T. Davis